

Dunn Bindery, Inc. and Local 289M (Detroit Toledo-Lansing) Graphic Communications International Union AFL-CIO. Case 7-CA-34830

April 30, 1998

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS LIEBMAN
AND BRAME

On May 25, 1994, the National Labor Relations Board issued its Decision and Order¹ directing the Respondent, Dunn Bindery, Inc., its officers, agents, successors, and assigns, inter alia, to restore the unit employees' terms and conditions of employment as they existed on July 25, 1993; and make whole, with interest, the unit employees for any loss of wages and benefits they may have suffered as a result of the unlawful changes to those terms and conditions of employment, including making any contractually required contributions to the fringe benefit funds of Local 289M (Detroit Toledo-Lansing) Graphic Communications International Union, AFL-CIO. On March 28, 1996, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.²

A controversy having arisen over the Respondent's failure to make payments toward satisfying the Board's Order, as enforced, the Regional Director for Region 7 issued an Amended Compliance Specification and Notice of Hearing on May 14, 1997,³ asserting that the Respondent owed \$120,044.77, plus interest, to the affected employees, and \$128,397.42, plus interest, to the fringe benefit funds.⁴

On October 29, the Respondent filed its Revised Answer to the Amended Compliance Specification admitting the allegations in paragraphs 1 through 12 of the amended compliance specification, but reserving the right to challenge any inadvertent or mathematical errors in paragraphs 4(a) through (e), 5(a) through (c), 6, 8 through 11, and 12. The Respondent also asserts that any obligation it may have had pursuant to the Board's Order, as enforced, no longer legally exists because of the liquidation of its assets.

On November 13, the General Counsel filed with the Board a Motion for Summary Judgment on the Pleadings. In his motion, the General Counsel submits that the Respondent's assertion that it may challenge any errors contained in the specification fails to specifically set forth the Respondent's position as to the applicable premises for its assertion and fails to furnish

appropriate supporting figures as required by Section 102.56(b) of the Board's Rules and Regulations. Thus, the General Counsel submits that the Respondent's revised answer does not constitute a denial within the meaning of the Rules, but constitutes an admission. Accordingly, the General Counsel moves that the allegations be deemed to be admitted to be true and that the Respondent be liable for the amounts set forth in the amended compliance specification.

On November 17, the Board issued an Order Transferring the Proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment on the pleadings should not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(b) of the Board's Rules and Regulations provides:

(b) . . . The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

Section 102.56(c) provides, in pertinent part:

(c) . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

¹ In an unpublished decision, the Board adopted the administrative law judge's findings in the absence of exceptions.

² The Board's Order was enforced in Case 95-6600, an unpublished decision.

³ All dates are in 1997, unless stated otherwise.

⁴ The amounts owed are set forth in attachment 20 and schedule "C," respectively, of the amended specification.

We agree with the General Counsel that the Respondent's revised answer does not meet the requirements of Section 102.56. The allegations as set forth in the amended compliance specification explain the basis for the backpay owed to the affected employees and the contributions owed to the fringe benefit funds. Section 102.56(b) states that if the Respondent disputes the accuracy of the figures contained in the specification, the Respondent must state the basis for the disagreement and furnish the relevant supporting figures. Here, the Respondent's revised answer admits the allegations of paragraphs 1 through 12 of the amended specification, but reserves the right to challenge any inadvertent or mathematical errors. The Respondent's answer fails to specify the basis for disputing the accuracy of the figures, and does not set forth "in detail the [R]espondent's position as to the applicable premises." Nor has the Respondent furnished any alternative figures in support of its position. Because the Respondent's revised answer does not satisfy the requirements of Section 102.56(b) of the Board's Rules, we deem the Respondent to have admitted to be true all of the allegations in the amended compliance specification.

In regard to the allegation that the Respondent has insufficient assets to satisfy the claims made in the amended compliance specification, we find that the Respondent's claim is irrelevant to this proceeding. It is well settled that the issue in a compliance proceed-

ing is the amounts due, not whether the Respondent is able to pay. *Pallazola Electric*, 312 NLRB 569, 570 (1993).

Accordingly, having found the allegations of the amended compliance specification to be true, we grant the General Counsel's Motion for Summary Judgment.

ORDER

The National Labor Relations Board orders that the Respondent, Dunn Bindery, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall pay a total of \$120,044.77 to the individuals as set forth in attachment 20 of the amended compliance specification, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws. The Respondent shall also pay \$128,397.42 to the fringe benefit funds of Local 289M (Detroit Toledo-Lansing) Graphic Communications International Union, AFL-CIO as set forth in schedule "C" of the amended compliance specification, plus any additional amounts owed to the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), accrued to the date of payment. In sum, the total amount owed by the Respondent under the Board's Order is \$248,442.19, plus interest on the backpay due and any additional amounts due the funds, minus tax withholdings required by Federal and state laws.